

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

O.A.No.16 of 2014

Wednesday, the 10<sup>th</sup> day, of September, 2014

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

Service No.13936947, Ex-Sep J.Hanumantha Rao  
Son of Late Subba Rao, aged about 61 years  
Door No. 7/142, Venkataraju Nagar  
Village – Chinameeram, Post – Bhimavaram  
District: West Godavari, (A.P), PIN: 534 203

...Applicant

By Legal Practitioner:  
Mr.M.K.Sikdar

vs.

1. Union of India  
Represented by – The Secretary  
Govt.of India, Ministry of Defence  
New Delhi – 110 011
2. The Officer-in-Charge  
Army Medical Corps Records  
Pin – 900 450  
C/o – 56 APO
3. The PCDA (P)  
G – 3 Section, Draupadi Ghat  
Allahabad (U.P.), Pin: 211 014

...Respondents

Mr. B.Shanthakumar, SPC

**ORDER**

[Order of the Tribunal made by  
Hon'ble Lt Gen K Surendra Nath, Member(Administrative)]

This original application is filed by Ex Sepoy J Hanumantha Rao praying to this Tribunal to call upon the 2<sup>nd</sup> respondent to produce the records in respect of the Invaliding Medical Board, leading to the discharge of the applicant and the impugned order No.13936947/Pen/DP-Corres dated 7<sup>th</sup> November 2012 passed by the respondents and quash the same; declare that his disability is attributable to and aggravated by military service and also to direct the respondents to grant disability pension as per rules with all consequential benefits.

2. The applicant submits that after a vigorous physical test and medical examination, he was enrolled in the Indian Army on 28<sup>th</sup> November 1973 as Sepoy at Army Medical Corps (AMC) and had undergone strenuous military training at AMC Centre, Lucknow. He submits that at the time of joining the Army, he was not suffering from any ailment and had no history of any constitutional disease in the family. During the course of training, he was infected with Hepatitis (Jaundice) and was admitted to Military Hospital, Lucknow. He was given treatment as an inpatient / outpatient for approximately one month and, thereafter, he was put in low medical category CEE and sent on two months sick leave. He would submit that as he felt he had not recovered fully from the disease and as he also wanted to rejoin duty before the expiry of the sick leave and wanted to go to Lucknow, but wrongly boarded in Howrah Mail and reached Howrah railway station. He would state that he felt sick and was helped by the Military Police and was admitted to Base Hospital, Barrackpore. He was treated in the Base Hospital for over a month after which he was brought before the Invaliding Medical Board. The applicant was downgraded and categorized as EEE (E) and was sent home with escorts. The discharge certificate given on 04 March 1975 was on medical grounds under Army Rule 1954, Rule 13 (3 )III (iii), but as per the discharge book, under Rule (III) (ii) having been found medically unfit for further service. The applicant submits that he was not served with Invaliding Medical Board documents and was not given any reasons

for the discharge from service. The applicant would submit that the disease be treated as 'attributable to and aggravated by military service' and he be granted disability pension. He would further submit that he appealed before the respondents on 10.10.2012 but the respondents passed the impugned order on 07<sup>th</sup> November 2012 denying him disability pension on the ground that it is neither attributable to nor aggravated by military service. Aggrieved by the order passed by the respondents, the applicant has approached this Tribunal for declaring his disability as attributable to and aggravated by military service and to grant him disability pension.

3. The respondents in their reply statement would submit that the applicant was enrolled in the AMC on 28 November 1973 and was admitted in the Base Hospital, Lucknow due to infective hepatitis, with effect from 14 February 1974 to 27 March 1974. He was then granted 56 days sick leave from 28 March 1974 to 22 May 1974. The applicant was again granted 15 days advance of annual leave from 21 October 1974 to 04 November 1974. The applicant was found by RTO at Howrah Railway station in abnormal behaviour state and roaming about aimlessly, confused and, therefore, he was sent to Command Hospital (Eastern Command), Calcutta for treatment. As per the opinion of Senior Advisor (Psychiatry), the applicant was showing a mixed picture of "Schizophrenia" and "depression" and had shown only partial improvement with treatment. He had a tendency to become aggressive and violent in the ward. Being a recruit and showing psychotic features at the start of his Army career, the Senior Advisor (Psychiatry) opined that he was not suitable for retention in service.

4. The Invaliding Medical Board opined that his disability 'Schizophrenia' was neither attributable to nor aggravated by military service and that the disease was a constitutional disorder not connected with military service. He was discharged from service on 04 March 1975. His claim for disability pension was rejected by PCDA (P), Allahabad due to (i) the disability being not attributable to military service; & (ii) does not fulfill the conditions, namely, that it existed before or arose during military service and has been or remains aggravated thereby. The decision of PCDA (P) was communicated to the applicant on 08 October 1975 by AMC Record Office with an

advice to appeal against the decision of CDA (P) Allahabad within six months, if he so desired. However, the applicant had not submitted any appeal during the said period. After a gap of 37 years, the applicant had submitted a representation dated 10 October 2012 for the grant of disability pension. He was suitably replied to by the AMC Record Office, *vide* their letter of 07 November 2012 stating that he was not eligible for disability pension as the disease contracted by him was neither attributable to nor aggravated by military service. They would further aver that the disease for which he was invalided out of service, i.e., 'Schizophrenia' was a constitutional disorder, unrelated to military service and cannot be detected during routine medical examination. They would submit that the applicant has now approached this Tribunal after 39 years. The respondents would further submit that the applicant has since married and leading a normal life and has not produced any document supporting his claim that he is suffering from the said disease. Also, his medical condition could have changed due to various factors over the last 39 years. They would aver that his case is barred by delays and laches. They would further submit that the applicant had only done training as a recruit in a peace station and had not been posted to any counter insurgency/ operational area or high altitude area or any difficult assignment that could have aggravated such a condition. They would also state that the onset of disease was in October 1974 when he was at home in his home town on leave in Chagallu (Andhra Pradesh). Therefore, it cannot be attributed to military service. They would also cite several judgments by the Hon'ble Supreme Court that lay emphasis on the fact that findings of the Medical Board should be given primacy in deciding such cases. In view of the above stated facts, the respondents would request this Tribunal to dismiss the O.A. as the same is devoid of any merit or substance.

5. We have heard the arguments of Mr.M.K.Sikdar, learned counsel for the applicant and Mr.B.Shanthakumar, Senior Panel Counsel as also Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and have also perused all the documents / records placed before us.

6. From the pleadings of both, the following points emerge for consideration:

(a) *Whether the disability 'Schizophrenia' was attributable to or aggravated by military service of the applicant? Is the disease a constitutional one?*

(b) *Whether the applicant is entitled for any disability pension or compensation as sought for by the applicant?*

(c) *What relief, if any, the applicant is entitled to?*

7. Points (a) & (b): From the material placed before us, we note that the applicant was enrolled in the Indian Army on 28 November 1973 as Sepoy in AMC, Lucknow. While he was under training at AMC Centre, Lucknow, he contracted infectious hepatitis and was hospitalized in the Base Hospital, Lucknow from 14 February 1974 to 27 March 1974. At the end of the hospitalization, he was granted 56 days of sick leave from 28 March 1974 to 22 May 1974. From the records, it appears that he rejoined training after availing of the said sick leave and the said training was for five months. He was given another 15 days of advance annual leave from 21 October 1974 to 04 November 1974. From the medical records, we note that on 24 October 1974, he was found roaming aimlessly in a confused state at Howrah Railway Station. He was apprehended by the RTO and was sent to Command Hospital, Calcutta for treatment. On perusal of Invaliding Medical Board proceedings, we find that he was sanctioned 32 days recruit leave on completion of recruit training with effect from 19 October 1974. He reached home at Chagallu (A.P) and stayed there for two days. The applicant then claims that he had started back to Lucknow whereas he was found at Howrah Railway Station in a state of confusion and roaming about and at a loss to know what to do. The RTO at Howrah apprehended him and sent him to Command Hospital, Eastern Command, Calcutta. From the report of the Senior Advisor (Psychiatry), it appears that he wanted to return to Lucknow as he was not feeling happy and comfortable at home. He also stated that he was not keen to return home. From the documents we also note that he was diagnosed by the Senior Advisor (Psychiatry) that he was suffering from 'Schizophrenia' (295) and the place of occurrence was shown as Chagallu (A.P) while on leave which is the home station of the individual. His degree of disability was shown as 80% for one year and, in the psychiatrist's opinion, it is not

connected with military service, but a constitutional disorder. We would also note from the Invaliding Medical Board proceedings that the disability did not exist before the applicant entered the military service. In cases of deciding disability pension, two factors are important, i.e., (i) the degree of disability; and (ii) attributability or aggravation due to military service. While the doctors have opined the disease at 80% disability for one year, the fact that the applicant was a recruit under training in the AMC, Lucknow and, therefore, stresses and strains which can cause aggravation of any disease in a field or counter-insurgency or high altitude areas, do not exist. The onset of disease, as recorded by the doctors in the Invaliding Medical Board as also from the applicant's own statement, appears to be his own home station, i.e., Chagallu (A.P). Attributability or aggravation is not normally conceded especially when the disease occurs while on leave. Infectious Hepatitis is a liver disease and is not known to be a causative factor for mental diseases. We also note that he rejoined from sick leave and thereafter he was on training for five months. No claim was made by the applicant nor any evidence exist on record, including the report of Senior Advisor (Psychiatry) with regard to identifiable stressors such as sexual abuse or physical abuse that could be a possible causative factor for the illness.

8. On the other hand, from the medical documents, we note that the parents of the applicant were against him joining the Army. We also note that he was having a love affair with a girl of different religious community. We also see that he left his home in an unhappy state, while still on leave and he was unwilling to return home. All these facts lead to a conclusion that perhaps domestic issues were the causative factors rather than any service related issue, leading to the said illness. Also, the individual has not gone for a Review Medical Board on completion of one year nor has he challenged the Medical Board proceedings within the stipulated period. Therefore, it is difficult to state what his present condition is. The learned counsel for the applicant has claimed in oral submissions that he was undergoing some treatment but has not produced any documents or medical papers to that effect. Per contra, he has admitted that he is leading a normal married life for many years. He has come before this Tribunal only

after 39 years and even if a Review Medical Board is ordered now, it will be difficult to ascertain, if the present medical condition was due to the original onset of disease that occurred while he was in service or is the recurrence of such a disease due to various social, psychological and economic factors over the last 39 years.

9. The applicant has claimed that at the time of his enrolment, he had no ailments and was found medically fit in all respects and, therefore, his disease should have been deemed as occurred during the service. According to Paragraphs 7 and 8, Chapter II of "Guide to Medical Officers (Military Pensions) 2002", some diseases ordinarily escape detection on enrolment. The relevant paragraphs are reproduced below:-

"xx xx

*7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member, e.g., pre-enrolment history of an injury, or disease like epilepsy, mental disorder etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and / or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.*

*The following are some of the diseases which ordinarily escape detection on enrolment:*

- (a) Certain congenital abnormalities which are latent and only discoverable on full investigations, e.g., Congenital defect of spine, Spina Bifida, Sacralization.*
- (b) Certain familial and hereditary diseases, e.g., Haemophilia, Congenital syphilis, Haemoglobinopathy.*
- (c) Certain diseases of the heart and blood vessels, e.g., Coronary Atherosclerosis, Rheumatic fever.*

- (d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member, e.g., Gastric and Duodenal Ulcers, Epilepsy, Mental disorders, HIV infections.
- (e) Relapsing forms of mental disorders which have intervals of normality.
- (f) *Diseases which have periodic attacks, e.g., Bronchial Asthma, Epilepsy, CSOM etc.*  
[emphasis supplied by us]

8. *The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.*

*In addition to any documentary evidence relative to the member's condition on entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt."*

10. The Hon'ble Supreme Court reported in (2009) 9 SCC 140 between Secretary, Ministry of Defence and others vs A.V.Damodaran (Dead) through LRs and others held that ....*"such opinion of the Medical Board would have the primacy"*... In dealing with such cases and while dismissing the disability pension pleas, this Bench has opined, (OA No.29 of 2012 dated 30 April 2013 in the case Ex-Ret P.Kikin vs the Union of India and others) that:

"xx xx

*12. Psychosis is a disease as stated in Para-54 of the Amendment to Chapter VI & VII, Guide to Medical Officers (Military Pensions). In Para-54 (a) (ii), if the applicant was serving in a field station or high altitude area or counter insurgency area, the attributability should have been conceded. Admittedly, the applicant was in a peace station where he was undergoing training. The applicant was not yet drafted to service from the level of recruit. In such circumstance, it cannot be said that the training undergone by the applicant could be equated to field areas or high altitude areas or counter insurgency areas."*



This bench had also averred, in the same aforesaid case that:

*"14. In the said circumstances, the Medical Board's opinion cannot be interfered nor be set aside by us. As rightly pointed out by the Invaliding Medical Board, the applicant, who was having 30% disability cannot be reinstated in service nor any disability pension be paid since the disability was not attributable to or aggravated by military service, but was a constitutional one. Therefore, the claims of the applicant on either way as well as for compensation are liable to be rejected. Accordingly, all the three points are decided against the applicant."*

11. Going by these precedents, we find this case squarely fits the pattern. The applicant was a recruit under training and not drafted into full service; initial onset of the disease occurred while he was on home leave; the disease could not ordinarily be discovered at the time of enrolment; and as per the direct and indirect evidence on record, and in the opinion of the Medical Board, the disease contracted was a constitutional disorder and not attributed to or aggravated by military service. In view of the foregoing, both points are decided against the applicant.

12. Point (c): In view of the conclusions reached in the aforesaid paragraph, this Bench is of the considered opinion that the applicant is not entitled to any disability pension or any other compensation and his claims are liable to be dismissed.

13. In fine, the O.A. is dismissed. No order as to costs.

Sd/-

Lt Gen K Surendra Nath  
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah  
Member (Judicial)

**10-09-2014**

[True copy]

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No

Internet : Yes/No

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To:

1. Union of India  
Represented by – The Secretary  
Govt.of India, Ministry of Defence  
New Delhi – 110 011
2. The Officer-in-Charge  
Army Medical Corps Records  
Pin – 900 450  
C/o – 56 APO
3. The PCDA (P)  
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5. Mr. B. Shanthakumar, SPC  
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7. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah  
(Member-Judicial)  
and  
Hon'ble Lt Gen K Surendra Nath  
(Member-Administrative)

O.A.No.16 of 2014

Dated: 10.09.2014